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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,561	10/28/2005	Heinz Focke	20605.016US	9591

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EXAMINER

BUI, LUAN KIM

ART UNIT PAPER NUMBER

3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/509,561

Applicant(s)

FOCKE ET AL.

Examiner

Luan K. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/27/04</u> . | 6) <input type="checkbox"/> Other: ____. |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-6, 8-10, 12, 13 are 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term “namely” has been used through out in the claims as rejected is confusion and indefinite, for example, in claim 3, the phrase “a protrusion is provided on the slide (11), namely projecting stop tab” is confusion because it is not clear the claim recites a protrusion or projecting stop tab? Applicant is required to correct all the claims as rejected.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 7, 8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by The Switzerland Patent No. 370699 to Jehouda et al. (hereinafter Jehouda'699). Jehouda'699 discloses a pack comprising a slide (4, 5) and a shell (1, 2) which partially encloses the slide.

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The shell is opened at both ends for accommodating a cigarette group (14) and the slide having at least one base wall (8). The shell having stops means (12) and the slide can only be moved to a limited extent within the shell.

As to claim 2, Jehouda'699 discloses the relative movement between the slide and the shell is limited by mutually corresponding stops and mating stops (12) formed within the shell.

As to claim 3, Jehouda'699 discloses the slide includes a protrusion/projecting stop tab (11) which interacts with at least one stop on an inner side of the shell (the at least one stop formed on the inner side and extended to an outer side of the shell).

As to claim 7, Jehouda'699 discloses the stop tab (11) projected into the recess (opening, 12) formed in the region of the side wall.

5. Claims 1, 2, 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Toimil (4,267,926). Toimil discloses a pack comprising a slide (1) and a shell (2) which partially encloses the slide. The shell is opened at both ends for accommodating a cigarette group and the slide having at least one base wall (9). The shell having stops means (19, 21) and the slide can only be moved to a limited extent within the shell.

As to claims 10 and 11, Toimil discloses the slide and the shell connected to one another within the shell by a deformable connecting means (19, 21) such as a connecting flap and the connecting flap connected the base wall of the slide to the bottom wall of the shell.

6. Claims 1-3 and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Griffith (6,474,468). Griffith discloses a pack comprising a slide (2) and a shell (3) which partially encloses the slide. The shell is opened at both ends for accommodating a cigarette group and the

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slide having at least one base wall (50, 70). The shell having stops means (159, Figure 6) and the slide can only be moved to a limited extent within the shell.

As to claim 12, Griffith discloses the slide comprises a protrusion (79) such as a projecting stop tab and at least one stop such as opening stop on an inner side of the shell.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3-6, 9, 13-15 and 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Switzerland Patent No. 370699 to Jehouda et al. (hereinafter Jehouda'699) in view of Griffith (6,474,468) or Shimada et al. (3,311,283; hereinafter Shimada'283). Jehouda'699 discloses the pack as above having all the limitations of the claims. To the extent that Jehouda'699 fails to show the at least one stop being formed on an inner side of the shell, Griffith shows a pack comprising a slide (2) and a shell (3) which partially encloses the slide and the slide including a protrusion (79) such as a projecting stop tab and at least one stop such as opening stop on an inner side of the shell. Shimada'283 suggests a slide (5) and a shell (1-4) which partially encloses the slide and the shell having a protrusion (4) such as a projecting stop tab formed on an inner side of the shell and at least one stop such as opening stop (15). It would have been obvious to one having ordinary skill in the art in view of Griffith or Shimada'283 to

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modify the pack of Jehouda'699 so the protrusion and at least one stop formed on an inner side of the shell to prevent the pack from getting damage.

As to claims 9 and 16, Shimada'283 suggests the protrusion (4) and the at least one stop such as the opening stop (15) appear to be oblique.

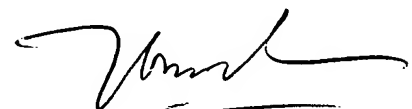
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. **The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 for Formal papers and After Final communications.**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lkb
January 18, 2007



Luan K. Bui
Primary Examiner
Art Unit 3728